

# United States Court of Appeals

Eleventh Circuit

56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Thomas K. Kahn  
Clerk

In Replying Give Number  
Of Case and Names of Parties

March 5, 2004

**VIA FACSIMILE**

**CORRECTED**

TO ALL COUNSEL OF RECORD

Re: 02-12924 - United States v. Carl M. Drury, Jr.

Dear Counsel:

For the purposes of the upcoming en banc rehearing in the above-referenced case, the court desires for counsel to focus their briefs on the following issues:

1. **Whether the jurisdictional element of the murder-for-hire statute, 18 U.S.C. § 1958(a), which criminalizes the “use [of] the mail or any facility in interstate or foreign commerce,” requires that there be a showing that the facility was actually used in interstate commerce or that it is sufficient to show that the facility, and not its use, was in interstate or foreign commerce in light of the statute’s definition of a facility under § 1958(b)(2), which provides that a “facility of interstate commerce includes means of transportation and communication.”**
2. **Address the federalism jurisprudence of the Supreme Court insofar as it may relate to this case.**
3. **Whether the district court erred under United States v. Gaudin, 515 U.S. 506 (1995), by instructing the jury that a pay or cellular telephone is a per se facility in interstate commerce, rather than asking the jury to decide whether such a phone is in interstate commerce.**

Appellant’s opening brief shall be filed in the Clerk’s Office in Atlanta by 5:00 p.m., Monday, April 5, 2004. Appellee’s opening brief shall be filed in the Clerk’s Office in Atlanta by 5:00 p.m., Wednesday, May 5, 2004. Any reply brief by the Appellants must be filed in the Clerk’s Office in Atlanta by 5:00 p.m., Thursday, May 20, 2004. NO EXTENSIONS WILL BE GRANTED. An original and 18 copies of the en banc briefs should be filed (appellant’s in blue covers, appellees’ in red covers and any reply in gray covers). NO EXTENSIONS WILL BE GRANTED. The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing (facsimile, e-mail, etc.). NO TIME FOR MAILING SHALL BE ALLOWED. All parties are also required to upload the brief in electronic format to the court’s Web site as described in 11th Cir. R. 31-5.

**All counsel** are requested to file 16 copies of their opening panel briefs, record excerpts and supplemental authorities prior to 5:00, Monday, April 5, 2004.

The case will be argued before the Court sitting en banc on Tuesday, **June 15**, 2004, in Atlanta, Georgia. Counsel will be allotted twenty minutes per side for oral argument. Counsel will receive a calendar notifying of the time of oral arguments at a later date.

Thank you for your attention to this matter.

Sincerely,

THOMAS K. KAHN, Clerk

By:

---

Matt Davidson  
Calendar Clerk/Court Sessions Supervisor  
404.335.6131